

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41009
Docket No. MS-41094
11-3-NRAB-00003-090187**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

(Remy A. Giannini

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“This is to serve the required notice in accordance with the Uniform Rules of Procedure of the National Railroad Adjustment Board, revised June 23, 2003, of my intent to file an Ex-Parte submission within thirty (30) days covering a controversy regarding:

A claim, File No. UPGCW-70-1584. As provided in Rule 69, Section A, my authorized representative with the Brotherhood of Railroad Signalman submitted to the supervising official authorized to receive such requests for the carrier, Union Pacific Railroad. The carrier scheduled the hearing to be presented on Tuesday, November 18, 2008 at 0800 hours. At the Roseville Engineering Building, 9451 Atkinson Street, Roseville, CA. The letter of request was delivered via US Certified Mail No. 7008 1300 0000 4596 5406.

The hearing was not allowed to be presented as scheduled and I did not receive a cancellation notice prior to the date of the hearing with an explanation of why the hearing was cancelled. As provided in Rule 69, Section A. As a direct result of this violation, a number of additional matters I believe to be violations, involved in the interpretation, application or enforcement of the provisions contained in the Collective Bargaining Agreement and the State Department of Labor laws covering payment of wages, which have also been dismissed, and remain unpaid, with no explanation and no

response to any of my letters of request. (USPS certified mail numbers available upon request)

I was Terminated from employment as of Wednesday, November 19, 2008. The explanation stated for reasons covered under Rules 58 and 57, Section F. There is nothing to support this decision. These rules have no relevance to the situation I was put in. There was not a reduction in force to support Rule 57, Section F. There are no sections of Rule 58 that apply, since the gang was not abolished. I was not displaced by a senior member exercising his rights and I had no authority to exercise the right to displace any member, junior or senior, on the seniority roster.

The only thing I did that was slightly similar to Rule 58, was Section D. In which case I was temporarily placed on a gang to allow me to earn some income. I reported after being held back for a day, for unknown reasons. Only to find that my Corporate Lodging Card had been suspended by the Supervisor of the Gang I was temporarily assigned to . It is another one of the matters I had no explanation for, and has been dismissed without remorse.

The carrier has completely ignored any and all of the rights I am entitled to under the agreement. I am starting to question whether or not this whole incident is not caused due to the Claim on my behalf: File No. NRAB 7210-UP. Has that possibility even been considered?

I am referring this matter to your committee in accordance with the provisions set forth in Section 153, Title 45, Chapter 8 USC (Section 3 of the Railway Labor Act)."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On December 17, 2008, the Claimant sent a letter to the Third Division of the National Railroad Adjustment Board, advising of his intention to file an Ex Parte Submission in support of the above stated claim. He did not send a copy of his letter to the Carrier, as required by the Board's June 23, 2003 Uniform Rules of Procedure. By letter dated January 6, 2009, the Board notified the Claimant and the Carrier that it had received the claim and assigned it an NRAB Case Number. The Board's acknowledgment letter which was addressed to the Claimant as well as the Carrier, included a copy of the Claimant's December 17, 2007 Notice of Intent and directed both parties to file their Ex Parte Submissions by a date certain.

The only record presented by the Claimant in this case is his Notice of Intent. The Carrier contends and the record confirms that the Claimant never presented his claim or grievance to the Carrier on the property in accordance with the requirements of Rule 69 – Claims and Grievances of the Collective Bargaining Agreement between the Brotherhood of Railroad Signalmen and the Union Pacific Railroad Company, and Section 3, First (i) of the Railway Labor Act. Accordingly, this matter was never progressed on the property, there was no exchange of correspondence or positions and there was no on-property conference as mandated by Section 2, Second, of the Railway Labor Act. In particular, the Claimant's Notice of Intent filed December 17, 2007, and docketed as Docket No. MS-41094, preceded and is independent of the claim that was filed on his behalf by the Organization on December 18, 2007. Although the Claimant sought to address the issues raised by that claim in his presentation to the Board, Docket No. MS-41094 is not an appeal of that claim, which had not yet been filed when he submitted his Notice of Intent.

The Board has consistently recognized that it does not have jurisdiction to consider claims which have not been handled in the usual manner on the property and

which have not been subject to conference as required by the Railway Labor Act. See, e.g., Third Division Award Nos. 26275, 26555, 33910 and additional Awards cited therein. Accordingly, the claim must be dismissed without consideration of the merits of the issues described in his Notice of Intent.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2011.